

§ 160A-58.27. Relief.

(a) Each provision of an agreement shall be binding upon the respective parties. Not later than 30 days following the passage of an annexation ordinance concerning territory subject to an agreement, a participating city which believes that another participating city has violated this Part or the agreement may file a petition in the superior court of the county where any of the territory proposed to be annexed is located, seeking review of the action of the city alleged to have violated this Part or the agreement.

(b) Within five days after the petition is filed with the court, the petitioning city shall serve copies of the petition by certified mail, return receipt requested, upon the respondent city.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the respondent city shall transmit to the reviewing court:

- (1) A transcript of the portions of the ordinance or minute book in which the procedure for annexation has been set forth;
- (2) A copy of resolutions, ordinances, and any other document received or approved by the respondent city's governing board as part of the annexation proceeding.

(d) The court shall fix the date for review of the petition so that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either:

- (1) That the provisions of this Part were not met; or
- (2) That the provisions of the agreement were not met.

(e) At any time before or during the review proceeding, any petitioner may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) Upon a finding that the respondent city has not violated this Part or the agreement, the court may affirm the action of the respondent city without change. Upon a finding that the respondent city has violated this Part or the agreement, the court may:

- (1) Remand to the respondent city's governing board any ordinance adopted pursuant to Parts 2 or 3 of this Article, as the same exists now or is hereafter amended, for amendment of the boundaries, or for such other action as is necessary, to conform to the provisions of this Part and the agreement.
- (2) Declare any annexation begun pursuant to any other applicable law to be void. If the respondent city shall fail to take action in accordance with the court's instructions upon remand under subdivision (d)(1) of this section within three months from receipt of such instructions, the annexation proceeding shall be void.

(g) Any participating city which is a party to the review proceedings may appeal from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to superior court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the appellate division; provided, that the superior court may, with the agreement of the parties, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the respondent city without regard to any part of the area concerning which an appeal is being made.

(h) If part or all of the area annexed under the terms of a challenged annexation ordinance is the subject of an appeal to the superior court or appellate division on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior court or appellate division, whichever is appropriate, or the date the respondent city's governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

(i) A participating city which is prohibited from annexing into an area under a binding agreement may file a petition in the superior court where any of the territory proposed to be annexed is located, or a response in a proceeding initiated by another participating city, seeking permission to annex territory in the area notwithstanding the agreement. If the territory qualifies for annexation by the city seeking to annex it, the court may enter an order allowing the annexation to proceed with respect to all or a portion of the territory upon a finding that there is an imminent threat to public health or safety that can be remedied only by the city seeking annexation. The procedural provisions of this section shall apply to proceedings under this subsection, so far as applicable. (1989, c. 143, s. 1.)